

Assignment—Garnishment.

When assignment of pay due a state employe is filed with the State Auditor, and subsequent garnishment on execution is served upon the Auditor, the Auditor is not at liberty to pay either party, where the legality of the assignment is in question, until the court has decided the same.

March 2, 1905.

Hon. H. R. Cunningham, State Auditor, Helena, Montana:

Dear Sir:—I am in receipt of your favor of February 27, wherein you ask opinion from this office as to whether or not an assignment made by Arthur T. Wright of his salary to Nathan Godfrey, and filed in your office on the 4th day of February, will hold and take precedence over a garnishment under an execution, filed in your office against money due and owing said Arthur T. Wright on February 24.

For your protection, I advise you to make return to the garnishment to the effect that on the date of service of the garnishment you held an amount of money, stating the amount, due and owing to Arthur T. Wright,

but that there had been filed with you on the 4th day of February a certain assignment for said money, setting forth copy of the assignment. The garnishment on execution cannot affect any money earned subsequent to the date of the service of the garnishment.

It is not for you or I to say whether or not the assignment is sufficient in law and will hold as against the garnishment on execution, but for decision by the court. You are not at liberty to pay the money you hold, earned by said Wright up to the date of service of the garnishment to either the claimant under assignment or claimant under execution. You merely hold the money as stake-holder, so to speak, awaiting the determination of the court as to the sufficiency of the assignment.

Yours very truly,

ALBERT J. GALEN,
Attorney General.